DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

NOV 20 2014

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Fiscal Year 2015 Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Training and Notification Requirements

The No FEAR Act of 2002 protects Federal employees from unlawful discrimination, anti-harassment and reprisal for participation in protected equal employment opportunity (EEO) and whistleblowing activity.

New employees are required to receive No FEAR Act training within 90 calendar days of entering on duty. All employees are required to complete refresher training every two years to ensure continued understanding of their rights and responsibilities.

For your convenience, the No FEAR Act training is available online at the WHS Learning Center (iCompass), https://whsportal.osd.mil/lms/Pages/default.aspx. The WHS Office of Equal Employment Opportunity and Diversity (EEOD) also provides comprehensive classroom training that satisfies the No FEAR Act requirements.

Agencies are also required to provide written notice on the rights and remedies available under applicable anti-discrimination and whistleblower protection laws. WHS and organizations serviced by WHS EEOD are responsible for displaying the attached "No FEAR Act Notice" in common areas, agency website, or other readily accessible media. Senior leaders must also ensure that deployed civilian personnel receive this notice. The notice is available online at http://www.whs.mil/sites/default/files/eeod/NoFEARActNotice.pdf.

Questions concerning iCompass should be directed to the WHS Learning System administrator at lms@whs.mil. For other questions and assistance on the No FEAR Act, please contact EEOD at (571) 372-0832 or WHS.diversity@mail.mil.

William E. Brazis
Director

Attachment:
No FEAR Act Notice

DISTRIBUTION:

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WASHINGTON HEADQUARTERS SERVICES

No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is commonly known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." In support of this purpose, Congress found that "agencies cannot run effectively if those agencies practice or tolerate discrimination."

Federal employees, former Federal employees and applicants for Federal employment are encouraged to review the following information on the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

ANTIDISCRIMINATION LAWS

Directors, managers and supervisors are responsible for ensuring that the work environment is free from discrimination based on the following protected groups: race, color, religion, sex (including sexual harassment), national origin, age (40 and older), disability (mental or physical), or reprisal for participation in previous EEO activity. A Federal agency also cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, age, disability, and/or reprisal, you should contact the Washington Headquarters Services (WHS) Office of Equal Employment Opportunity and Diversity (EEOD) at 571-372-0832. Contact with EEOD must be made **within 45 calendar days** of the alleged discriminatory act, or in the case of a personnel action, within 45 calendar days of the effective date of the action. EEOD should be contacted in accordance with 29 Code of Federal Regulations 1614 in order to attempt informal resolution through mediation or counseling prior to filing a formal complaint of discrimination.

If you are alleging equal pay or age discrimination, you have the right to file an administrative complaint under 29 Code of Federal Regulations (C.F.R.) 1614, or to bypass the administrative process and file a civil action in U.S. District Court. In the latter case, you must file a Notice of Intent to Sue, pursuant to 29 C.F.R. Section 1614.201(a), after giving the Equal Employment Opportunity Commission (EEOC) not less than 30 days notice of your intent to file such an action. Such notice must be filed in writing with the EEOC, Federal Sector Programs, 131 M. Street NW, Washington DC 20507, within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services. The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations. For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at http://www.dol.gov/vets.

WHISTLEBLOWER PROTECTION LAWS

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to be evidence of violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you are the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—http://www.osc.gov.

RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

ALTERNATIVE DISPUTE RESOLUTION

It is WHS policy to use and offer alternative dispute resolution (ADR) services to its serviced customers as an alternative to litigation or formal administrative procedures to the maximum extent appropriate.

In support of Administrative Instruction No. 106, the ADR program offers informal, neutral, voluntary, and confidential methods for early dispute resolution of selected prohibited personnel practice disputes.

When used in appropriate circumstances, ADR can yield results that are faster, less expensive, and less contentious than formal administrative processes. Mediation is the primary mechanism used to provide parties the opportunity to resolve such disputes without the need for a lengthy investigation or costly litigation. ADR is an alternative to formal processes, not a replacement. If settlement does not occur, the right to pursue formal processes still exists. You may contact the WHS ADR Program Manager at 571-372-0844 to explore the appropriate use of ADR techniques.

DISCIPLINARY ACTIONS

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for misconduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

ADDITIONAL INFORMATION

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the WHS EEOD. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—http://www.eeoc.gov and the OSC Web site—http://www.osc.gov.

EXISTING RIGHTS UNCHANGED

Pursuant to Section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

This notice is for all civilian and military personnel and applicants for employment within the following organizations that receive support from WHS:

Office of the Secretary of Defense (OSD)
Joint Chiefs of Staff (JCS)
Defense Advanced Research Projects Agency (DARPA)
Defense Legal Services Agency (DLSA)
Defense Security Cooperation Agency (DSCA)
Missile Defense Agency (MDA)
Pentagon Force Protection Agency (PFPA)
Business Transformation Agency (BTA)
American Forces Information Service (AFIS)
Defense Prisoner of War/Missing Personnel Office (DPMO)
Defense Technology Security Administration (DTSA)
DoD Counterintelligence Field Activity (CIFA)
DoD Test Resources Management Center (TRMC)
Office of Economic Adjustment (OEA)
TRICARE Management Activity (TMA)
U.S. Court of Appeals for the Armed Forces (USCAAF)
Washington Headquarters Services (WHS)